

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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MILES LACROSS,

File No.: 10CV3922 JNE/LIB

Plaintiff,

vs.

CITY OF DULUTH, A MINNESOTA  
MUNICIPALITY; OFFICER ANTON  
MARC, INDIVIDUALLY AND IN HIS  
CAPACITY AS A DULUTH POLICE  
OFFICER; SGT. FOGERTY,  
INDIVIDUALLY AND IN HIS  
CAPACITY AS A DULUTH POLICE  
OFFICER; LT. DAN CHICOS,  
INDIVIDUALLY AND IN HIS  
CAPACITY AS A DULUTH POLICE  
OFFICER; AND  
UNKNOWN/UNNAMED POLICE  
OFFICERS OF THE CITY OF DULUTH;  
ST. LUKE'S HOSPITAL, A  
MINNESOTA ENTITY; AND DR.  
PETER M. STENEHJEM, MD,

Defendants.

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ANSWER OF DEFENDANT CITY OF DULUTH

Defendant City of Duluth ("City") responds to the Complaint as follows:

1. Unless admitted or otherwise qualified, deny the allegations asserted in the Complaint.
2. Admit this court has jurisdiction.

3. Assert that the City is without sufficient information to admit or deny allegations found in paragraph 5; therefore, they are denied.

4. Admit that the City is a municipal corporation organized pursuant to the laws of the State of Minnesota.

5. Admit that Defendants Mark, Chicos and Fogarty were employees of the City on September 17, 2006.

6. Admit that Defendants Mark and Chicos were on duty in their official capacity as licensed peace officer between the hours of 01:53 and 03:30 on September 17, 2006.

Deny that Defendant Fogarty was on duty.

7. With regard to the allegations asserted in paragraphs 6-18, assert upon information and belief as follows:

a. Admit that on September 17, 2006 at approximately 01:53 Defendant Mark initiated an investigatory stop of Miles LaCross, who was 20 years of age, on the suspicion of consumption of alcohol by an underage person, a violation of state statute and city code.

b. Assert that LaCross attempted to assault Defendant Mark; that Defendant Mark defended himself and attempted to control LaCross by employing a taser w/probes; that the taser attempt failed; that LaCross was not exposed to an electrical charge; and that LaCross fled from the scene at approximately 01:54.

c. Assert that LaCross was subsequently located by Defendant Chicos at approximately 02:05 hours on September 17, 2006. Assert that LaCross was obviously intoxicated and taken into custody.

- d. Assert that Defendant Mark arrived at Chico's location, handcuffed LaCross and placed him in his squad car.
  - e. Assert that during transport LaCross became violent and again attempted to assault Defendant Mark.
  - f. Admit that Defendant Mark used his taser by employing a touch tase to control LaCross after verbal commands and warnings failed to control LaCross.
  - g. Assert that Defendant Mark transported LaCross to St. Luke's Hospital and released him to the care of medical personnel.
  - h. Assert that Defendant Mark subsequently transported LaCross to a detoxification facility after St.Luke's released LaCross.
  - i. Assert that the detoxification facility refused to admit LaCross advising Defendant Mark that LaCross was too sedated to be admitted.
  - j. Assert that Defendant Mark then transported LaCross back to St. Luke's hospital and delivered him to the care of medical personnel prior to 03:19:52.
- 8. Assert that the City is without sufficient information to know the identity of the female who was observed with LaCross; therefore, allegations related to the identity of this female are denied.
  - 9. Deny remaining allegation asserted in paragraphs 6-18.
  - 10. Upon information and belief, deny the allegations of Count I.
  - 11. Upon information and belief, deny the allegations of Count II.
  - 12. Deny the allegations of Count III.
  - 13. Deny the allegations of Count IV.

14. With regard to the allegations of Count V, assert as follows:
  - a. Deny the allegations of paragraphs 37 & 38.
  - b. Assert that Defendant City is without sufficient information to admit or deny the remaining allegations of Count V; therefore, they are denied.
15. Deny the allegations of Count VI.

#### DEFENSES

16. The Plaintiff has asserted his claims against Defendant City that have no factual support and without having conducted an adequate investigation; therefore, Plaintiff and his counsel have violated Rule 11, Fed.R.Civ.P. Defendant City reserves the right to seek sanctions pursuant to Rule 11 and attorney fees pursuant to 42 U.S.C. § 1988.
17. Plaintiff has asserted claims that fail to state a claim upon which relief may be granted.
18. Defendant City is protected by vicarious official immunity.
19. Defendant City is protected by statutory immunity.
20. Plaintiff failed to put Defendant City on notice of the claims arising under state law as required by MSA §466.05, subd. 1. Defendant City's ability to defend itself has been prejudiced as a result; therefore, the claims are subject to dismissal.

WHEREFORE, Defendant City seeks an order of the court as follows:

- a. Granting judgment in favor of Defendant City and dismissing this action with prejudice.
- b. Awarding Defendant City its costs, disbursements and fees authorized by law.
- c. Awarding Defendant City sanctions and attorney fees.

- d. Awarding Defendant City other equitable relief as the court deems just.

Dated this 10th day of January, 2010

Respectfully submitted,

s/M. ALISON LUTTERMAN  
M. ALISON LUTTERMAN  
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